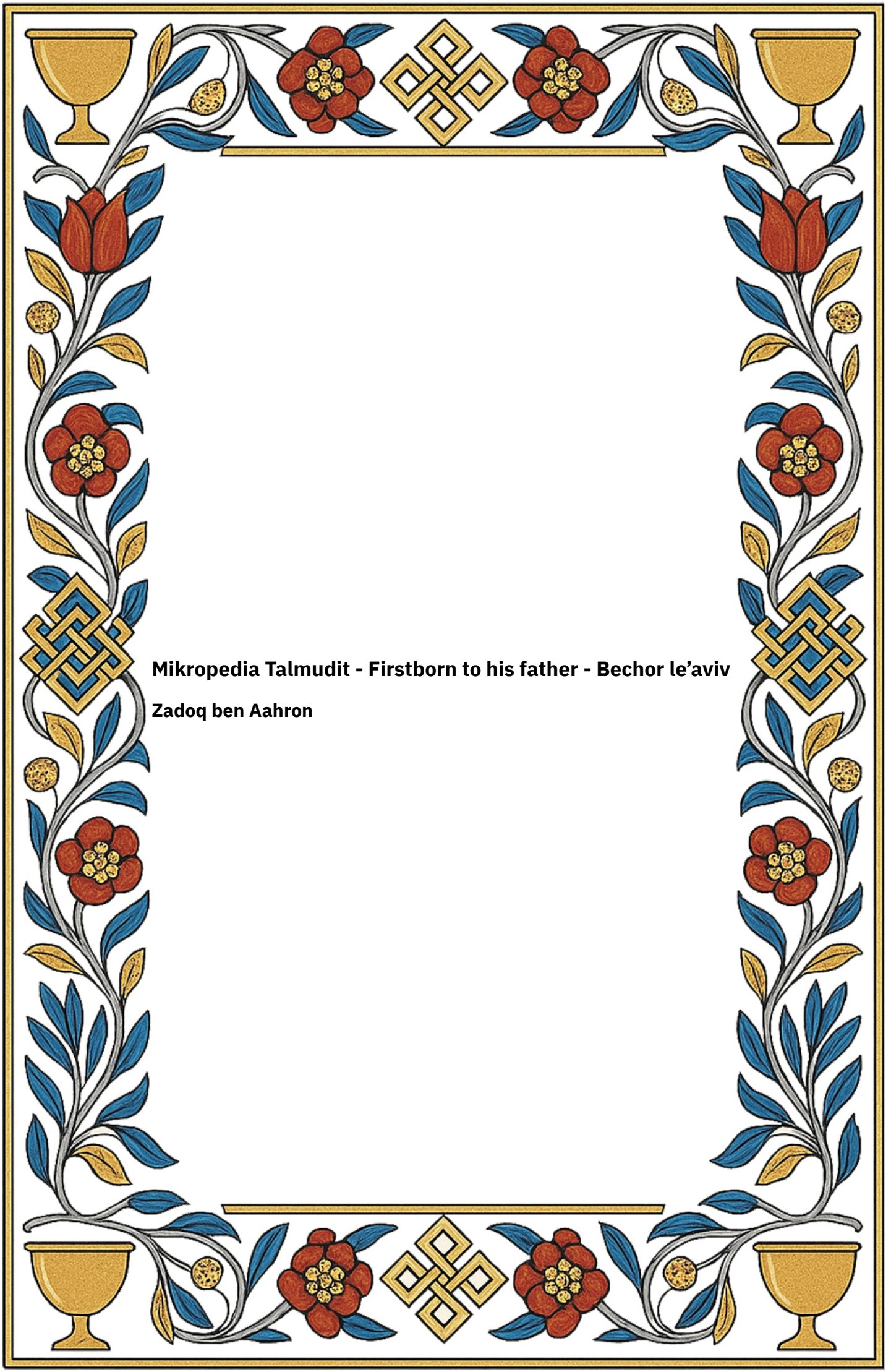

Mikropedia Talmudit - Firstborn to his father - Bechor le’aviv

Zadoq ben Aahron

מיקרופדיה תלמודית:בכור לאביו

Mikropedia Talmudit: Firstborn to his father - Bechor le’aviv

Firstborn to his father - Bechor le’aviv[1] - A male who was born first to his father, for the law of taking a double portion in inheritance[2]

Table of Contents תוכן עניינים (Tochen Inyanim)

1 Firstborn בכור (Bechor)
1.1 Firstborn son בן בכור (Ben Bechor)
1.2 Firstborn daughter בת בכורה (Bat Bechorah)
1.3 Firstborn after sons who were born to him during his gentile status בכור לאחר בנים שנולדו לו בגיותו (Bechor le’achar banim shenoldu lo b’giyuto)
1.4 Firstborn after sons he had from a maidservant or a gentile woman בכור לאחר בנים שהיו לו מִשִׁפְחָה או גויה (Bechor le’achar banim she’hayu lo mi’shifcha o goyah)
1.5 Firstborn who is a mamzer and son of a divorced woman or a chalutzah בכור ממזר ובן גרושה וחלוצה (Bechor mamzer u’ben gerushah ve’chalutzah)
1.6 Firstborn born after his father’s death בכור שנולד לאחר מיתת אביו (Bechor shenolad le’achar mitat aviv)
1.7 Firstborn who was born after stillbirths בכור שבא אחר נפלים (Bechor she’ba achar nefalim)
1.8 When the head of the one born came out before the previous one died כשיצא ראש הנולד קודם לו מת (K’she’yatza rosh hanolad kodem lo met)
1.9 Caesarean section[4] and the one born after יוצא דופן[4] והבא אחריו (Yotzei dofen [arba] ve’haba acharav)
1.10 When his first wife became pregnant before the second, but gave birth after her מי שנתעברה אשתו הראשונה לפני השניה, אך ילדה אחריה (Mi she’nitabra ishto harishonah lifnei ha’shniyah, ach yaldah achareha)
2 Doubtful firstborn ספק בכור (Safek Bechor)
3 Credibility regarding the firstborn נאמנות על הבכורה (Ne’emanut al ha’bechorah)
3.1 Those who are credible הנאמנים (Ha’ne’emanim)
3.2 The reason for credibility טעם הנאמנות (Ta’am ha’ne’emanut)
3.3 If his father is credible within seven days אם אביו נאמן תוך שבעה (Im aviv ne’eman toch shiv’ah)
3.4 Presumption for one of the sons that he is the firstborn and the father says another is firstborn חזקה לאחד הבנים שהוא בכור ואמר האב שאחר בכור (Chazakah le’echad ha’banim she’hu bechor ve’amar ha’av she’acher bechor)
3.5 When it was not established that he is his son and firstborn מי שלא הוחזק בנו שהוא בנו ובכור (Mi she’lo huchzak beno she’hu beno u’bechor)
3.6 When he says he was a firstborn and died כשאומר שהיה בכור ומת

(K’she’omer she’hayah bechor u’met)
3.7 Father who said unclear things אב שאמר דברים לא מבוררים (Av she’amar devarim lo mevorarim)
3.8 Father who became mute אב שנשתתק (Av shenishtatek)
3.9 It is found written that he is a firstborn נמצא כתוב שהוא בכור (Nimtza katuv she’hu bechor)
3.10 When he was established to the public as a firstborn כשהוחזק אצל העולם לבכור (K’she’huchzak etzel ha’olam le’bechor)
4 Footnotes הערות שוליים (He’arot shulayim)

Firstborn

Firstborn Son

Firstborn for inheritance, who takes a double portion in his father’s inheritance, is the one who was born first to his father (Mishnah Bekhorot 46a; Rambam Nachalot 2:9; Tur Shulchan Aruch Choshen Mishpat 277:8), as it is said: “For he is the first of his strength, the right of the firstborn is his” (Deuteronomy 21:17), thus the scripture depends on the one who is first to his father (Rashi s.v. Shekvar; Rambam ibid.; Tur Shulchan Aruch ibid.), and even if he had a wife who already bore several sons, if this one is first to his father, he takes a double portion (Mishnah ibid.; Rambam ibid.; Tur Shulchan Aruch ibid.).

Firstborn Daughter

Even though the daughters enter into inheritance in the place where there are no sons (see entry Inheritance), the law of the firstborn does not apply to them, as it is stated in this section: “and they bear him sons” (there, 15) - sons in this law, and there are no daughters in this law (Sifrei Ki Tetze 215).

Firstborn after sons who were born to him in his gentile state

He had sons when he was a gentile and converted, the Amoraim disagreed:

There are those who say that he does not have a firstborn for inheritance, for he already had the first of his strength (Rabbi Yochanan in Bechorot 47a), that the sons he had in his gentile state were attributed after him (Sema 277:16), and so

is the law (Rambam there 12; Tur Shulchan Aruch there 10).

And there are those who say that he is not a firstborn for inheritance, for a convert is like a newborn child (Reish Lakish there).

Firstborn after sons that he had from a maidservant or a gentile woman

Indeed, an Israelite who had a son from a maidservant or from a non-Jewish woman, since he is not called his son (see entry Father A), the one who comes after him from the Israelite woman is the firstborn for inheritance (Rambam there, based on Bekhorot 46a - 47a; Tur Shulchan Aruch there).

And so the maidservant herself who was freed afterwards, and so the non-Jewish woman who converted, and bore a son afterwards from that Israelite, he is a firstborn for inheritance (Mishnah there).

Firstborn mamzer and son of a divorced woman and chalutzah

The firstborn who is a mamzer takes a double portion, and it goes without saying if he is the son of a divorced woman or a chalutzah to a priest, as it is stated in this section: If a man has two wives, one beloved and the other hated, and they bear him children, both the beloved and the hated (Deuteronomy 21:15) - “beloved,” beloved before the Omnipresent in her marriage, “hated,” hated before the Omnipresent in her marriage, and from the repetition of “hated” in the text, we include both those forbidden relationships that are liable for negative commandments and those that are liable for karet (Sifrei there, and Rabbeinu Hillel; Rambam there 2:13; Tur Shulchan Aruch there 10).

Firstborn born after the death of his father

Firstborn who was born after the death of his father, such as if his wife gave birth to twins when he died, or if his two wives were pregnant and gave birth after his death, does not take a double portion, as it is said there: “For the firstborn, the son of the hated, he shall acknowledge” (Deuteronomy 21:17), and behold, he is

not in the world to be acknowledged (Bava Batra 142b, and Rashbam s.v. Firstborn who was born; Rambam there 2, and Maggid Mishneh; Tur Shulchan Aruch there 3).

When he is born during the father's lifetime, even though his father did not see him and did not know him all his days, in any case, he is fit for recognition, but this one is not fit for recognition (Rashbam there, we require recognition).

And therefore, there are among the early authorities those who hold that if he was born when the father was dying, he does not take a double portion, because he is not recognizable when he is dying (Nimukei Yosef there, in the name of Rashi and Raavad and Tosafot; Ritva Niddah 44b; Rema there, in the name of some say).

The forehead emerged during his father's lifetime, but his entire head did not come out into the air of the world until after his father's death - who died suddenly (SMA there section 7) - the matter depends on a dispute among the Amoraim:

To know that the emergence of the forehead is birth for the inheritance of the firstborn (see below) behold, he takes a double portion (Maggid Mishneh there; Beit Yosef there; Bach there), and so is the law (Rambam there; Shulchan Aruch there).

To know that it is not considered birth for inheritance until the entire head emerges, he does not take a double portion (Magid Mishneh there; Beit Yosef there; Bach there)[3].

Firstborn that comes after stillborns

The one who comes after stillborns, even though the head of the stillborn emerged while alive, such as when they were twins, one stillborn and one completed his months, and the stillborn emerged his head alive and retracted it, and his fellow came and preceded and emerged, this last one is the firstborn for inheritance (Mishnah Bekhorot 46a; Rambam there 10; Tur Shulchan Aruch there 6).

The reason: because regarding the firstborn it is said: "the first of his strength" (there 17) - one for whom his father's heart grieves if he dies, for he is a viable son, but the miscarriage his heart does not grieve over (Bava Batra 111b, and Rashbam s.v. and we question).

And therefore, even if the stillborn was entirely born, the one who comes after is a firstborn for inheritance (Rashi Chullin 68a s.v. "even though"; Rashbam Bava Batra there), and specifically when the first was certainly a stillborn (see entry "stillborn"), but in the case of a doubtful stillborn, even if only its head emerged alive, the one who comes after is not a firstborn for inheritance, as the burden of proof is on the one who seeks to extract from his fellow, and furthermore, most offspring are viable (Taz there s.v. "even though").

When the head of the newborn emerged before him, he died

Even a nine-month-old whose head emerged dead, the one who follows him is a firstborn for inheritance (Mishnah Bekhorot there; Rambam there 10; Tur Shulchan Aruch there), for that which is said "the first of his strength" is that no child was born to him before this one who emerged alive into the air of the world (Rambam there; Tur Shulchan Aruch there), and therefore a nine-month-old whose head emerged alive, the one who follows him is not a firstborn (there).

And the Amoraim disagreed:

Some say that even if the forehead emerged - that is, most of his head (Niddah 28a) - this is considered birth, so that the one who comes after is not a firstborn for inheritance (Rabbi Yochanan in Bechorot 46b), and so is the law (Rambam there; Shulchan Aruch there), that even though regarding the firstborn it is said: he shall recognize (there 17), even with the forehead alone there is already recognition (Rabbi Yochanan there).

And there are those who say that the forehead is not for birthright, since it is said: "he shall recognize," there is no recognition except in a complete face (Rabbi Shimon ben Lakish there).

Exceptional Case[4]and What Follows It

Yotzei-dofen [a newborn that was brought out from its mother's womb through the side] (see its entry) and the one that comes after it, the Tannaim disagreed on the matter:

There are those who say that neither of them are firstborns for inheritance (Tanna Kamma in Mishnah Bekhorot 47b), the first because he was not born in the manner of birth, and the Torah said: "And they bear him children" (ibid. 15), and the second because it is stated: "The first of his strength" (ibid. 17), and this is not the first of his strength, for another preceded him (Gemara ibid., and Rashi

s.v. "And they bear him"), and so is the law (Rambam Bekhorot 11:16, and Nachalot 2:11; Tur Shulchan Aruch Yoreh De'ah 24:24, and Choshen Mishpat 277:7).

And there are those who say that the first is a firstborn for inheritance (Rabbi Shimon in the Mishnah there), as it is said regarding the impurity of childbirth: "And if a female she bears" (Leviticus 12:5) to include one born by caesarean section, which is a complete birth, and therefore also for firstborn status this is a birth (Gemara there, and Rashi s.v. according to his reasoning).

One whose first wife conceived before the second, but gave birth after her

Forever the birth determines the firstborn, and even one whose wife became pregnant and he divorced her, and he married another and she became pregnant, and the second gave birth before the first gave birth, the firstborn is not dependent on conception but on birth (Haamek Davar Deuteronomy 21:17; Shoel Umeshiv, Third Edition, 3:52)[5].

Doubtful Firstborn

Doubtful firstborn, doubtful ordinary, such as when the firstborn is mixed with another, he does not take a double portion, as it is said: "And it shall be the firstborn son" (Deuteronomy 21:15) - "the firstborn" and not the doubtful (Sifrei Ki Tetze 215), for thus is the implication of the text that he should be a firstborn from the time of being, and not doubtful (Rashbam there s.v. hukru).

But there is a distinction in the matter:

If it was never recognized who is the firstborn, such as if they were born in hiding, and it is not known which of them is first to be the beginning of his strength, there is no firstborn portion at all (Bava Batra 127a, and Rashbam s.v. B'machaba; Rambam Nachalot 2:6; Tur Shulchan Aruch Choshen Mishpat 277:11).

However, if they were recognized and eventually mixed, they write authorization to one another and take a firstborn portion from their brothers, for the one who received the authorization from his friend says to the brothers: If I am the firstborn, give me for myself, and if not, give me for my brother (Gemara there, and Rashbam s.v. "they write"; Rambam there; Tur Shulchan Aruch there).

Uncertainty whether a nine-month child to the first or a seven-month child to the last, such as a woman who was divorced from her husband and did not wait three months (see entry Havchanah), and married another and gave birth after seven months from her marriage, the one who comes after him does not take a firstborn portion even with authorization (Tur and Rema there), because he is a doubtful firstborn from birth (Bedek HaBayit there).

Trustworthiness Regarding the Birthright

The Faithful

Three are trusted regarding the firstborn:

The midwife who delivers him is believed to say this one came out first, immediately (Kiddushin 74a; Rambam there 14; Tur Shulchan Aruch there 12), as long as he did not leave her hands (Levush there 12), but if she left and returned - she is not believed (Pitchei Teshuva there section 5, based on Gemara there 73b).

His mother is trusted regarding him all seven [days] (Gemara there; Rambam there; Tur Shulchan Aruch there), for his father does not yet recognize him, as he has not yet left his mother's care to enter the covenant (Rashi there s.v. all seven).

And his father is trusted forever (Gemara there; Rambam there; Tur Shulchan Aruch there).

And there are among the early ones who hold that there is a positive commandment imposed on the father to inform who is the firstborn, so that he may inherit a double portion, as it is said: "He shall acknowledge the firstborn, the son of the hated, to give him a double portion" (Deuteronomy there 17), but if it becomes known to us that this is the firstborn - without his informing - the commandment is fulfilled in his silence (Ramban's critiques on the Book of Commandments, additions to negative commandments 12).

The Reason for the Trustworthiness

Taste of the father's trustworthiness from the Torah, as it is said there: he shall recognize (see its entry. There) - he shall recognize him to others, from here a person is trusted to say: this is my firstborn son (Rabbi Judah in the Baraita there).

Indeed, the reason for the mother's and midwife's credibility is only rabbinic, for in all matters we require two witnesses who are not relatives. However, regarding the firstborn, there is a scriptural decree concerning the father - even though he is related to his son and is a single witness, and one witness or a relative is not credible to testify in monetary matters - and in the case of the mother and midwife, they were believed rabbinically, for in most cases of twins only the midwife recognizes who came out first, and during the seven days of birth the father is not present there (Taz Even HaEzer 4:20, according to Ran there 73b; this is also implied in Tosafot Rosh there 74a)[6].

And they gave a support for the trustworthiness of Chaya, from the scripture: And the midwife took and tied on his hand a scarlet thread, saying, This came out first (Genesis 38:28).

Jerusalem Talmud Kiddushin 4b, and Mareh HaPanim s.v. Chayah).

If his father is trusted within seven

The early authorities disagreed if the father is believed also within seven:

There are those who say he is not believed, for he does not yet recognize him, since he has not yet left his mother's care to enter the covenant (Rashi Kiddushin there s.v. "all seven", according to Lechem Mishneh Nachalot 2:14, Korban Netanel there 4:11 and the Prisha there s.k. 15; Yad Ramah there, in general).

And there are those who say he is believed, for the Torah said "he will recognize" in general, and even within seven is included (Yad Ramah there, "and it is possible"; Rashi there, according to Taz Even HaEzer 25:20; Rambam there, according to Lechem Mishneh there and Korban Netanel there), and even though within seven his father does not recognize him, this is generally, but if he says he recognizes him well, he is believed (Taz there).

Presumption for one of the sons that he is the firstborn and the father said another is firstborn

They were established with one of the sons that he is the firstborn, and his father said about another that he is the firstborn, Tannaim and Amoraim disagreed:

There are those who say that he is believed (Rabbi Yehuda in the Baraita in Kiddushin 78b and Bava Batra 127b; Rabbi Abba in the Gemara there 128b), and so is the law (Gemara there 129a; Rambam there; Tur Shulchan Aruch Choshen

Mishpat 277:12).

There are those who say he is not believed (Sages in the Baraita there and there; Rabbi Yochanan in the Gemara there 128b), for in their opinion, we do not learn from what is stated "he shall recognize" that the father is believed to testify about the firstborn, except when "recognition is needed," meaning there is no other person established as the firstborn (Gemara there and there), such as when they come from overseas, and it is not established among them who is the firstborn and who is the ordinary (Rashbam there 127b s.v. and the sages say).

And there are those who were uncertain about the matter (Samuel there 127 a-b).

And the Rishonim disagreed:

Some say specifically when he was established by mere voice according to his father, who was accustomed to say about him that he is the firstborn, the father is believed to say he is not the firstborn. But if he was established by witnesses who testify about the first that he is the firstborn, the father is not believed to contradict them (Rashbam there 127a s.v. they were established; Tur there, in his name).

And there are those who say the opposite, that if it was established by witnesses that he is a firstborn, in this the Torah believed the father more than the witnesses by the law of "yakir," but if his father was accustomed to say about him that he is a firstborn, he is no longer believed to say that he is not a firstborn, for once he has stated, he cannot retract and state again (Ramban there; Tur there, in his name; Nimukei Yosef there), and even within the time of "toch k'dei dibur" he is not believed to contradict his words (Nimukei Yosef there)[7].

One who has not been established that his son is his son and firstborn

And so if the father said about one who was not established as his son, that he is his son and firstborn, the early authorities disagreed:

Some say that even if the father said about someone who is not established as his son at all: This is my son and he is my firstborn - he is believed (Rambam there; Tur Shulchan Aruch there), and he takes a double portion even in assets that will fall to him when he is dying (Tur there), even though then he is not capable of acquisition, and he does not have a "migo" that he could have given it

to him as a gift, since at the time they came into his possession he cannot transfer them, all the more so beforehand, nevertheless he is believed by way of recognition, by decree of the scripture (Beit Yosef there).

And there are those who say that the Torah did not believe a father under the law of "recognition" except when it is known that he is his son in any case, and he testifies that he is his firstborn, but when it is not known that he is his son - his credibility is only under the law of "migo" that he could have given him as a gift, and therefore regarding the assets that fell to him when he is dying, or that will fall to him after some time, he is not believed (Rashbam Bava Batra 134b s.v. liyorsho; Tosafot there s.v. liyorsho)[8].

In what are these words stated? When it has not been established to us that he is his son, and also it has not been established to us that he is not his son. But if it has been established to us that he is not his son, the father is not credible to say that he is his firstborn, for from whichever angle you look at it, if this presumption that he is not his son we have established based on his word, he cannot retract from his initial words, and if it was established based on witnesses, he is not credible to contradict the witnesses (Sema there, section 20).

When he says he was a firstborn and died

Even when the father does not make another son a firstborn, but says that he had a firstborn son who died, and through this it turns out that the one held by us as a firstborn is not a firstborn - he is believed (Haamek She'elah 41:1).

A father who said unclear things

Hear witnesses that the father said: "So-and-so is my firstborn son," he takes a double portion, and the same applies if he said things from which it is understood that this is his firstborn. But if he said: "So-and-so is my firstborn son," he does not take a double portion, perhaps he meant firstborn to his mother (Bava Batra 126b; Rambam there 16-17; Tur Shulchan Aruch there 13).

And even if his son died and left children, and the father was eulogizing him: "Woe for my firstborn son," he is considered established as a firstborn, and his children take a double portion (Maharik 145; Beit Yosef there, in his name).

The wife of his deceased son was pregnant, and he said about the deceased that he is a firstborn - he is not believed because the fetus when born will take a double portion (Ha'amek She'elah there).

A father who became mute

The father who became mute, they examine him in the way they examine for bills of divorce (see entry Divorce), and if he hinted or wrote that this is his firstborn son, then he takes a double portion (Gittin 71a, according to Tosafot there s.v. inheritance; Rambam there 15; Tur Shulchan Aruch there 14).

It is found written that he is a firstborn

They found written that he was born at a known time, and they produced his mother's marriage contract and it is written in it the time of her marriage which was nine months before then, in a manner that there is no doubt that perhaps during that time she gave birth to another son, in any case, they do not rely on this, for this is not a will, and it is possible that it is an error, or a writing that is not true (Beit Yosef there 13, in the name of the Responsa of the Geonim; Sema there subsection 18).

And specifically in another's handwriting, not his father's, but if it was written in his father's handwriting as a memory that so-and-so my son was born at such-and-such time, since the father is accustomed to be precise in knowing the number of his son's years for the matter of Bar Mitzvah and the like, they rely on this (Taz there 11 s.v. "Mi she-nistapek"), and all the more so if they found in his father's handwriting that he wrote so-and-so my firstborn son is, he takes a double portion (Aruch HaShulchan there 18).

When he was established by the world as a firstborn

And so, if he is established among the world as a firstborn, such as he would fast every eve of Passover, and it is known that his mother is the first wife of his father, this is an established presumption that he is a firstborn to his father, and we do not establish his father as wicked to suspect that perhaps he fornicated with another while he was single (Aruch HaShulchan there).

Footnotes

1. ↑ 3, Firstborn of a person, pp. 280-282.
2. ↑ On his inheritance, see entry Inheritance of the Firstborn.
3. ↑ And there are those among the early authorities who hold that even if most of his forehead emerged during his father’s lifetime, he is considered a firstborn for inheritance (Tur there), for the majority is as the whole (Sema there sec. 6); and they challenged him and wrote that he wrote his words imprecisely (Bedek HaBayit there), or that his words should be emended (Bach there).
4. ↑ Cesarean section.
5. ↑ And see further in Chochmat Shlomo 278:1.
6. ↑ And also regarding the reason for the scriptural decree that the father is believed about his son, there are those among the early authorities who wrote that this is because no other person can recognize him except the father (Responsa of the Rosh 52:2), or that the father is accustomed to recognize his children more than others (Tosafot Rosh there).
7. ↑ And specifically when he was established only by witnesses, but not that the witnesses know he is a firstborn, such as when the witnesses testify that he was born from his wife first, and through this we established him as a firstborn, and now when the father says about the second that he is a firstborn, the first is disqualified automatically, for he is a mamzer and the Torah believed him about this, but if the witnesses testify that he is the firstborn, he is not believed to contradict them (Sema there sec. 24).
8. ↑ And there are those among the early authorities who hold that even when it is known that he is his son, he is only believed regarding the assets he currently has (Nimukei Yosef Bava Batra 127b, in the opinion of Rabbi Yehuda).

---

https://www.yeshiva.org.il/wiki/index.php/%D7%9E%D7%99%D7%A7%D7%A8%D7%95%D7%A4%D7%93%D7%99%D7%94_%D7%AA%D7%9C%D7%9E%D7%95%D7%93%D7%99%D7%AA:%D7%91%D7%9B%D7%95%D7%A8_%D7%9C%D7%90%D7%91%D7%99%D7%95_ref-1